

**POGREBA FIELD AIRPORT
AFFECTED AREA REGULATIONS**

Ordinance No. ____

Section 1. General Provisions. These regulations shall be known as the Pogreba Field Airport Affected Area Regulations [PFAAAR].

Authority. These regulations are authorized by the Airport Compatibility Act, Title 67, Chapter 7, Montana Code Annotated 2007, and applicable standards established by 14 Code of Federal Rules and Regulations part 77.

Legislative Findings. Pogreba Field / Three Forks Airport is in Montana located within the jurisdictional boundaries and subject to the local government authorities of the City of Three Forks and Gallatin County. The Pogreba Field Joint Airport Affected Area Regulation Board [airport board] was formed by Resolution No. 2005-162 of the Board of County Commissioners of Gallatin County on November 30, 2005, and by Resolution No. 064 05-06 of the City of Three Forks on January 10, 2006. Gallatin County has the authority to adopt regulations to prevent the creation of airport hazards, establish an airport affected area, and such other regulatory powers as provided by Montana Code Annotated § 67-1-101 et seq. Uncontrolled development, lights, radio broadcasts, and electromagnetic emissions in the vicinity of the airport could create obstructions or hazards to navigation, air traffic or airport operations with risk of harm to property and serious injury or death to persons navigating in the airspace or on the ground.

Purpose and Intent. The general purpose and intent is to promote public health, safety and general welfare of airport users and persons and property in the airport area. The regulations are intended to mitigate existing and potential obstructions or hazards to navigation, air traffic and airport operations by establishing reasonable review and permit process regarding property and structures within the airport affected area.

Section 2. Definitions. The definitions in Montana Code Annotated § 67-1-101 et seq. 14 CFR, Part 77 are adopted and incorporated by reference whether or not reproduced herein. In the event of conflict regarding any definitions incorporated and this regulation the more restrictive applies.

Aeronautical Areas. Runways, hangars, aprons, taxi-lanes, parking areas, roads, terminal, tarmac and other areas of the airport property shown on any official airport layout plan or maps for existing and future aviation needs.

Airport. The Pogreba Field / Three Forks Airport owned by Gallatin County and located in Three Forks, Montana.

Airport Appeals Board. The Gallatin County Airport Board appointed by the governing body that shall hear and decide appeals from the determinations, decisions or orders of the Airport Enforcement Officer, and shall hear and decide variance requests.

Airport Affected Area. The land and space above the ground surface of the airport in the proximity of the airport, the use of which may be affected by the airport's existence, and includes zones which are delineated areas on the ground that lie beneath the horizontal, conical, primary, approach and transitional surfaces as defined herein. The airport affected area is approximately 14,000 feet from the thresholds of Runway 2 and 20 and approximately 9,000 feet on each side of each runway as shown on the airport affected area map that is attached and incorporated by reference to this regulation, except areas outside Gallatin County.

Airport Affected Area Permit. The permit required pursuant to these regulations referred to as Airport Affected Area Permit (AAP) or permit.

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Airport Elevation. The highest point of elevation on the airport's runways based on the North American Vertical Datum of 1988 (NAVD 88) that is 4089 feet above mean sea level (MSL).

Airport Enforcement Officer. Any person or persons designated or appointed by the Gallatin County Board of County Commissioners to administer, enforce and interpret the Pogreba Field Airport Affected Area Regulations within areas outside the boundaries of the City of Three Forks. Any person or persons designated or appointed by the City Council of the City of Three Forks to administer, enforce and interpret the Pogreba Field Airport Affected Area Regulations within the areas that are in the boundaries of the City of Three Forks.

Airport Layout Plan (ALP). Any graphic depiction of existing conditions and future proposed development consisting of drawings, each intended to depict specific information about the airport, and explaining important features of the airport.

Airport Owner. Gallatin County the local government body that owns the airport.

Area. Any land within any of the airport affected area boundaries shown on the airport affected area map.

Electromagnetic Effect. Any interference or impediment to the transmission or quality of navigation or communication signals to or from aircraft, meteorological equipment, navigation equipment, communications equipment, or air traffic control facilities caused by a power source, radio frequency transmitter, or an object or surface that emits, reflects or re-radiates an electromagnetic signal or electrical pulse.

Governing Body. The Gallatin County Board of County Commissioners.

Hazard. Any structure or use of land that obstructs the air space required for the flight of aircraft in landing or taking off at the airport or is otherwise hazardous to landing or taking off, navigation, air traffic or airport operations. Obstructions or hazards are used interchangeably and include lights, radio or electromagnetic emissions or any other thing that creates or causes unreasonable risks or interference with landing or taking off, navigation, air traffic or airport operations.

Height. The vertical difference measured in feet and inches between the highest point of a structure and the ground where the structure is located.

Height Relative to Airport Elevation. The vertical difference in feet and inches between the highest point of a structure measured above mean sea level and the airport elevation.

Joint Airport Board. The Pogreba Field Joint Airport Affected Area Regulation Board created by Resolution No. 2005-162 of the Board of County Commissioners of Gallatin County on November 30, 2005, and by Resolution No. 064 05-06 of the City of Three Forks on January 10, 2006.

Non-Aeronautical Areas. Airport property, outside of the aeronautical areas that might be suitable for uses as office space for governmental entities.

Nonconforming Structures / Uses. Any structure or use that legally exists at the time these regulations become effective that does not conform to this regulation, however no increase or expansion of the nonconforming use or structure shall be allowed whatsoever without compliance with these regulations. A nonconforming structure that is substantially damaged may be reconstructed or replaced without obtaining a variance or permit provided that the degree of nonconformity or hazard is not increased.

Person. Any individual person, partnership, corporation, association, limited liability company, professional liability company, government board, agency or department, or other legal entity private or public.

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Regulation. The Pogreba Field Airport Area Affected Regulation including all provisions herein, and any definitions, maps or drawings that are expressly incorporated by reference and all of which shall be referred to as this regulation.

Runway. The prepared surface of an airport, suitable for landing or taking off by aircraft, as well as planned extensions documented on the airport layout plan.

Substantial Damage. Damage of EIGHTY (80%) PERCENT or more of any structure from any cause, including natural deterioration or decay, fire, storm or natural causes.

Structure. Any object constructed, erected, maintained, or installed by any person, including but not limited to any buildings, towers, poles, bridges, cell towers, radio antennae, cranes, smoke stacks, earth formations, overhead transmission lines, and any other things manmade.

Structural Penetration. A structure or use, except trees, that penetrates any of the surfaces shall constitute an obstruction or hazard and shall not be allowed, except pre-existing non-conforming structures and uses, and airport structures necessary for navigation or airport operations.

Surfaces. The airport imaginary surfaces for existing and planned development of the airport shown on the airport affected area map that include approach, conical, horizontal, primary and transitional surfaces.

Terrain Penetration. Any natural land surface that penetrates into any of the surfaces.

Threshold. The beginning portion of a runway that is available for landing.

Tree. Any naturally growing vegetation deciduous, coniferous or otherwise.

Variance. A variance is required before commencement, construction, erection, installation, enlargement or expansion of any use or structure not in strict conformity with this regulation.

Vicinity Sketch. A non-reduced 8 ½" x 11" copy of a portion of a 7.5 minute USGS Quadrangle Map that shows the location of a proposed structure or land use and identifies the ground elevation at the proposed location. The Vicinity Sketch must include the name of the USGS Map copied, the Township and Range of the area shown, and the horizontal and vertical datums upon which the map is based (typically found in the lower right-hand corner of the map).

Section 3. Surfaces and Zones. A zone is the ground beneath an imaginary surface of the same name. Zones and surfaces shown on the airport affected map establish standards for determining obstructions to air navigation and have the following characteristics stated herein.

Approach Zone and Approach Surface. The approach zone exists at each end of the runway, beginning at 200 feet from the end of each runway, centered on the extended runway centerline, with an initial width of 500 feet, widening thereafter uniformly to a width of 3,500 feet at a distance of 10,000 feet beyond the end of the primary surface. The approach surface slopes 34 feet outward for each foot upward for a horizontal distance of 10,000 feet.

Airport Property Area. The land owned by Gallatin County and designated for airport use.

Conical Zone and Conical Surface. The conical zone commences at the periphery of the horizontal zone and lies below the conical surface. A conical surface slopes 20 feet outward for each foot upward beginning at the periphery of the horizontal zone, for a horizontal distance of 4,000 feet. The conical surface begins at 150 feet above the airport elevation.

Horizontal Zone and Horizontal Surface. The horizontal zone lies beneath the horizontal surface, which is a plane 150 feet above the established airport elevation, the perimeter of which coincides with the perimeter of the horizontal zone shown on airport affected area map. The

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horizontal zone does not include the approach and transitional zones.

Primary Zone and Primary Surface. The primary zone is 500 feet wide, centered on the runway, extending 200 feet from each end of the paved runway. The primary surface is immediately above the primary zone.

Transitional Zone and Transitional Surface. The transitional zone is immediately below the transitional surface. The transitional surface is perpendicular to the runway centerline and its extension. It begins at the outer periphery of the approach surface and the primary surface and extends upward at a slope of 7 feet horizontally for each foot vertically from the sides of these two surfaces until it intersects the horizontal and conical surfaces.

Section 4. Airport Affected Area Permit. The Airport Enforcement Officer shall be appointed by the governing body with all necessary authority and power to supervise, interpret, administer, adopt permit and variance forms, issue permits and enforce this regulation, including may monitor and inventory all structures and uses in the airport affected area; shall determine and decide if any proposed structure or use would cause or create an obstruction or hazard; shall investigate any complaints regarding violations of this regulation, issue notices of violation and seek all available remedies.

Permit Required. Within the airport affected area an Airport Affected Area Permit must be obtained before any person: (1) constructs, erects or installs any structure, including rebuilding, altering, expanding, or enlarging an existing structure, such that the structure exceeds SEVENTY-FIVE (75') FEET in height above natural grade or exceeds NINETY (90%) PERCENT of the height of the imaginary surface where the structure is located; or (2) changes the use of land within the airport affected area.

Permit Fee. Permits fees shall be paid to the governing body in the amount of: Basic permit: \$25.00; Variance Request \$100.00; Appeals \$100.00. The Airport Enforcement Officer shall establish the permit application forms that must include sufficient information to identify: the owner and adjacent owners; vicinity sketch, site plan or survey locating all existing and proposed uses and structures or changes, alterations, repairs, replacements as applicable; describe all sources of lighting, radio, or electromagnetic emissions or other information reasonably necessary for the Airport Enforcement Officer to review the application and determine if hazards or obstructions will be created. Permit applications must be executed by the owner before a notary with representations as to the accuracy and truthfulness of the information. No permit fee shall be required for trees.

Permit Criteria. No permit may be granted that would allow the establishment of an airport hazard or that would allow a nonconforming use or structure to become a greater hazard to air navigation than it was on the effective date of this regulation.

Permits shall be granted unless the Airport Enforcement Officer finds that the structure or use, change of use, or replacement, rebuild, or substantial alteration, actions or activity would create a hazard or obstruction. If the Airport Enforcement Officer cannot with reasonable certainty rule out the possibility that a hazard or obstruction might be created, enlarged, or increased then the Airport Enforcement Officer may deny the permit. The Airport Enforcement Officer may require mitigation against the establishment of hazards or obstructions, including but not limited to: requirements that the owner install and maintain markers or lights at the owner's expense necessary to warn pilots of the presence of a potential hazard or obstruction; limit or condition any sources of light, radio or electromagnetic emissions; limit or condition hours of operations of

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uses that might interfere with navigation, air traffic or airport operations.

Section 5. Variances. Any person intending to erect or increase the height of a structure or use property in a manner that is not in accordance with the strict requirements of this regulation must obtain a variance from the Airport Appeals Board. In addition to the information required for a permit application, the variance application must include an explanation of the substantial practical difficulty or unnecessary hardship and any public interests that might be impacted. A variance application must include notice to the Federal Aviation Administrator on FAA Form 7460-1 (or such other updated forms) if required by FAA rules or regulations.

The person requesting the variance must notify all adjacent landowners by FIRST CLASS US MAIL at least TEN (10) DAYS before the Airport Appeals Board public meeting and the notice must include the date, time and place of the public meeting with a copy of the variance application and any sketches, maps, surveys or photographs of other documents that might be submitted at the public meeting. Proof of mailing shall be provided to the Airport Appeals Board prior to the commencement of the scheduled public meeting. Mailing to the last known addresses as shown in the public records of Gallatin County shall be adequate notice. The Airport Appeals Board must conduct the public meeting so as to allow reasonable time for the applicant, opponents and any other public comment, including FAA comments, recommendations or reports if applicable. The Airport Appeals Board must make findings of fact and determine if based on the evidence presented the applicant has met the criteria for the granting of a variance, if not the Airport Appeals Board must make findings of fact and deny the variance.

A variance must be granted if: (1) a literal application or enforcement of this regulation would result in substantial practical difficulty or unnecessary hardship and when the variance would not be contrary to the public interest. (2) A variance must be granted for a nonconforming use when there is no immediate hazard to safe flying operations or to persons and property in the vicinity of the airport and when the noise or vibrations from normal and anticipated normal airport operations would not be likely to cause damage to structures. (3) Conditions may be imposed for granting the variance, including, but not limited to, a requirement the owner of a structure or pay for the installation, operation and maintenance of lights and markers necessary to warn pilots of the presence of a hazard or obstruction with the Gallatin County Airport Appeals Board installing the lights or markers.

Section 6. Appeals. An appeal from a decision, determination or order of the Airport Enforcement Officer must be submitted, in writing, to the Airport Appeals Board, within SIXTY (60) DAYS of the written decision, determination or order of the Airport Enforcement Officer. Appeals may be filed by the applicant, any aggrieved person, adjacent landowner, or the governing body or its boards, departments or agents and must state with specificity the basis of the appeal and provide a complete record, including documents, photographs, maps, surveys, and transcript of any public hearings. Appeals shall be administered consistent with MCA § 67-7-302(2).

Section 7. Enforcement. The Airport Enforcement Officer is the agent(s) or person(s) appointed or designated by the Gallatin County Commission and City of Three Forks to administer, enforce, interpret, supervise, and administer these regulations and permits. Written notice of a violation must be given by the Airport Enforcement Officer to the violator, specifying how these regulations have been violated, how the violation can be remedied and setting a reasonable deadline for the correction of the violation, prior to the imposition of a penalty. The

Comment [c1]: How does one prove they've mailed notice if they haven't scheduled the meeting yet?

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penalty provisions of these regulations must also be included in the notice.

Penalty. If a person who violates the provision of these regulations, or condition of any permit or variance, or does not correct a violation, after notification that person is subject to a civil penalty and a criminal penalty. The civil penalty is a fine of \$100 for each day that the violation is not remedied after the Airport Board has determined there is a violation for which a fine should be assessed against the violator, has given its own written notice of the violation to the violator, has held a hearing on the violation and has provided a written determination to the violator that there is a violation.

In addition the County Attorney or City of Three Forks Attorney may file misdemeanor criminal charges for a violation of these regulations. Pursuant to Section 45-2-104, MCA, a person is absolutely liable for a violation of these regulations. Upon conviction a fine of \$500 must be imposed.

Injunction. Gallatin County or City of Three Forks may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of MCA § 67-7-101 et seq, or this regulation.

Marking Nonconforming Structures. If the governing body elects to install, operate and maintain, at its own expense, lights and markers necessary to warn pilots of a nonconforming use the owners of those structures shall allow this activity.

Conflicts With Zoning. In the event of conflict between this regulation and any zoning ordinance or resolution the more stringent limitation or requirement prevails.

Severability. If a court of competent jurisdiction holds any word, phrase, clause, sentence, paragraph, section, or other part of these regulations invalid, that judgment affects only the part held invalid.

Effective Date. The date that this regulation is adopted by resolutions of the Joint Airport Board, Governing Body, and the City of Three Forks.